

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1007 Misc.

JOHN WILLIAM BUTENKO, PETITIONER

v.

UNITED STATES OF AMERICA

No. 885

IGOR A. IVANOV, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY MEMORANDUM FOR THE UNITED STATES

Petitioner Ivanov suggests that the government is arguing that where it has used electronic surveillance to catch a spy, the spy should not be allowed to challenge the legality of that surveillance. However, that is not the government's position.

We believe that an examination of the logs of the overheard conversations involving petitioners will clearly establish that nothing arguably relevant to this

case was overheard. Thus, the government is not contending here that spies should be foreclosed from challenging the legality of any electronic surveillance used to obtain evidence that was in any manner used against them. Rather, the government is contending only that, in light of the fact that the electronic surveillance did not produce any evidence or leads to evidence, there is no reason to compel the government to disclose to anyone but the court the manner and means by which it conducts investigations in areas affecting national security.

We submit that in this case an *in camera* inspection of the logs of all overheard conversations involving petitioners will adequately protect both the rights of petitioners and the public interest.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1968.

